IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2513 OF 1991

Nasik Municipal Corporation, Nasik .. Petitioner
V/s
Shri.M.S.Patil,
C/o. 'Aryavarta', Akshar-7,
Rambhoomi, Nasik-5. .. Respondent

Mr.C.R.Dalvi for the Petitioner.
Mr.Ameya Tamhane h/f Mrs.Seema Sarnaik for Respondent.

CORAM: DR.S.RADHAKRISHNAN J.

DATE : 10.02.2006.

JUDGMENT:

1. Heard the learned Counsel for the parties. This petition has been filed by Nashik Municipal Corporation challenging the order passed by the learned II Joint Civil Judge, Senior Division, dated 13.9.1990 and also the judgment and order dated 11.3.1991 passed by the learned Additional District Judge, Nashik concurring with the judgment and order of the learned II Joint Civil Judge, Senior Division.

2. This Petition has been filed under Article 227 of the Constitution of India challenging the aforesaid two judgments and orders. The brief facts are that the Respondent who happens to be a practising Advocate was having the office premises on the first floor of the Shopping Complex known as 'Meghdoot Shopping Centre', Nashik. It appears that the Respondent, when he received the tax notice demanding the tax based on the rateable value fixed at Rs.3,942/- he challenged the

same by filing an appeal under Section 406 of the Bombay Provincial Municipal Corporations Act, 1949 before the learned II Joint Civil Judge, Senior Division, Nashik contending that the aforesaid fixing of rateable value was arbitrary and unreasonable. Before the learned II Joint Civil Judge, Senior Division, the Respondent herein had also pointed out that there was disparity in assessment, in the sense, in the case of Mr.Trivedi who had office premises admeasuring 110 Sq.ft.the rateable value was fixed at Rs.727/- whereas with regard to the Respodnent's premises admeasuring 220 sq.ft.the rateable value was fixed at higher rate i.e. at Rs.3942/-. The learned II Joint Civil Judge, Senior Division, Nashik after considering all the aspects, specially the aforesaid fact of disparity in assessment by the Corporation i.e.fixing the rateable value at lower rate with regard to Mr.Trivedi's office premises at Rs.727/- as compared to the Respondent's office premises at Rs. 3942/-, the learned II Joint Civil Judge came to the conclusion that as far as Respondent is concerned, the rateable value should be fixed at Rs.1454/- for the years 1987-1989 and accordingly fixed the rateable value at Rs.1454/- instead of Rs.3942/-.

3. Aggrieved by the aforesaid order of the learned II Joint Civil Judge, Senior Division, the present Petitioner had preferred Civil Misc.Appeal before the learned Additional District & Sessions Judge, Nashik. The learned District & Sessions Judge, Nashik by his

order dated 11th March, 1991 concurred with the view taken by the II Joint Civil Judge, Senior Division, Nashik, and the appeal filed by the Petitioner Corporation was dismissed. In paragraph No.8 of the judgment the learned District Judge has has observed that there was no illegality in fixing the rateable value of the Respondent's premises at Rs.1454/- for the period 1987-1989, and accordingly concurred with the view taken by the learned II Joint Civil Judge and the appeal filed by the Petitioner Corporation came to be dismissed. Aggrieved thereby the present Writ Petition has been filed by the Petitioner Corporation.

4. Mr.Dalvi, the learned Counsel for the Petitioner Corporation has contended that both the lower courts have erred completely. According to him, the Respondent herein, could not have directly filed an appeal before the learned II Joint Civil Judge, Senior Division, Nashik, without first raising an objection and then filing an appeal against the rateable value fixed by the Commissioner. To put in other words, the main contention of the learned Counsel for the Petitioner Corporation is that the very appeal filed by the Respondent before the II Joint Civil Judge, Senior Division, Nashik, was not maintainable. In that abehalf it would be relevant to quote Section 406 of the Bombay Privincial Municipal Corporations Act, 1949.

Sec.406

(1) Subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Judge.

(2) No such appeal shall be entertained unless -

(a) it is brought within fifteen days after the accrual of the cause of complaint;

(b) in the case of an appeal against a rateable value a complaint has previously been made to the Commisioner as provided under this Act and such complaint has been disposed of;

(c) in the case of an appeal against any tax in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of;

(d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within fifteen days after he first received notice of such amendment, and his complaint has been disposed of;

(e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value the amount of the disputed tax claimed from the appellant or the amount of the tax chargeable on the basis of the disputed rateable value upto the date of filing, the appeal has been deposited by the appellant with the Commissioner.

(3) In the case of any appeal entertained by the Judge, but not heard by him, before the date of commencement of the Maharashtra Municipal Corporation (Amendment) Act, 1975, the Judge shall not hear and decide such appeal unless the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, as the case may be upto the date of filing the appeal has been deposited by the appellant with the Commissioner, within thirty days from the date of publication of a general notice by the Commissioner in this behalf in the local newspapers. The Commissioner shall simultaneously serve on each such appellant a notice under sections 473 and 474 and other relevant provisions of this Act, for intimating the amount to be deposited by the appellant with him.

(4) As far as possible, within fifteen days from the expiry of the period of thirty days prescribed under

sub-section (3), the Commissioner shall intimate to the Judge the names and other particulars of the appellants who have deposited with him the required amount within the prescribed period and the names and other particulars of the appellants who have not deposited with him such amount within such period. On receipt of such intimation, the Judge shall summarily dismiss the appeal of any appellant who has not deposited the required amount with the Commissioner within the prescribed period.

(5) In the case of any appeal, which may have been entertained by the Judge before the date of commencement of the Act aforesaid or which may be entertained by him on and after the said date, the Judge shall not here and decide such appeal, unless the amount of the tax claimed by each of the bills, which may have been issued since the entertainment of the appeal, is also deposited, from time to time, with the Commissioner in the first month of the half year to which the respective bill relates. In case of default by the appellant at any time before the appeal is decided, on getting an intimatiion to that effect from the Commissioner, the Judge shall summarily dismiss the appeal.

5. A bare perusal of Section 406 of the Bombay Provincial Municipal Corporations Act clearly indicates that, under sub-section (1) it provides for the provision of appeals before the Civil Judge, against any rateable value or tax fixed or charged, Under sub-section (2)(b) it provides that appeal lies when in the case against a rateable value a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of.

6. In the instant case, the contention of the Respondent herein is that the Commissioner while fixing the rateable value should issue a public notice and in this regard he referred to Taxation Rule 15 of Chapter VIII to Schedule D of the Bombay Provincial Municipal Corporations Act, 1949 The Taxation Rule 15 reads as

under:

Rule 15:

> (1) The Commissioner shall, at the time and in the manner prescribed in rule 13, give public notice of day, not being less than fifteen days from the publication of such notice, on or before which complaints against the amount of any rateable value entered in the ward assessment-book will be received in his office.
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> (2) In every case in which any premises have for the first time been entered in the assessment-book as liable to the payment of property taxes, or in which the rateable value of any premises liable to such payment has been increased, the Commissioner shall, as soon as conveniently may be after the issue of the public notice under subrule (1), give a special written notice to the owner or occupier of the said premises specifying the nature of such entry and informing him that any complaint against the same will be received in his office at any time within fifteen days from the service of the special notice.

7. Perusal of the aforesaid Rule 15 indicates that the Commissioner while fixing the ratable value should issue a public notice under sub-rule (1) and should give special written notice to the owner and occupier of the said premise informing him that any complaint against the same will be received in his office at any time within fifteen days from the service of the special notice.

8. Mr.Dalvi, the learned Counsel for the Petitioner Corporation has contended that the Respondent herein has at no point of time pointed out that the Respodnent had not received any such notice and whereas approached the II Joint Civil Judge, Senior Division by way of an appeal when the tax demand was made. A perusal of the

pleadings clearly indicate that it was contended by the Petitioner Corporation that the Respondent had not raised any objection before the Commissioner and as such the Respodnent was not entitled to raise the same before the II Joint Civil Judge, Senior Division, Nashik. Similar contention was also raised by the Petitioner Corporation in the memo of Appeal filed before the learned Additional District & Sessions Judge, Nashik. However, in the present case, this issue has been specifically raised contending that the Respondent could not have filed an appeal before the learned II Joint Civil Judge, Senior Division, Nashik as the Respondent had not raised any objection before the Commissioner. It appears that the present Respondent has filed an affidavit in reply dated 6.2.1993 in this Petition, wherein in paragraph No.1 it is clearly mentioned that when the concerned room was first assessed in 1987-1988 at Rs.3942/- no notice was sent to the Respondent. It is also stated by the Respondent in the said affidavit in reply that the present petitioner had failed to bring on record any notice being served on the Respondent. When this affidavit in reply was filed by the Respondent the present Petitioner Corporation claim that they had also filed an affidavit in rejoinder dated 18th March, 1993, which however is not found in the Court records. The xerox copy of the same is produced wherein in paragraph No.2 it is stated that when the room was assessed for the first time, notice was issued to the Respondent, however, the Respondent did not challenge

the assessment. Mr.Dalvi, the learned Counsel for the Petitioner Corporation fairly states that he is unable to produce any such personal written notice being given to or served on the Respondent, as contended in the said affidavit in rejoinder. There is nothing on record to indicate that such a notice was individually served on the Respondent. Even a copy of such a purported notice is produced by the Appellant before me or even before the lower forums.

9. In any event, mere perusal of Section 406 as indicated hereinabove, makes it abundantly clear that appeal lies at two stages viz.the stage when the Commissioner fixes the ratable value and the person aggrieved thereby challenges the same by filing an appeal under Section 406 (2) (b), and the stage when the Assessee receives the tax demand with regard to the assessment under Section 406 (1). The Respondent cannot be deprived his remedy of an Appeal against the levy of tax, when no notice was served by the Appellant at the stage of fixation of rateable value. The Respondents case does not get barred under Section 406 (2) of the said Act as the Respondent was not served with any notice regarding the fixation of rateable value. If that be so the Respondent cannot be deprived of the statutory remedy of an Appeal. Therefore, in view of the clear provisions of Section 406 of the Act, an appeal lies. There is no substance in the contention of Mr.Dalvi that such an Appeal was not maintainable.

10. As far as merit of fixation of rateable value is concerned, both the Courts below have referred to the assessment of Mr.Trivedi's premises admeasuring 110 Sq.ft. with regard to which, the rateable value was fixed at lower rate of Rs.727/-, whereas in case of Respondent's premises admeasuring 220 Sq.ft it was fixed at Rs.3942/-. Both the lower Courts have rightly observed that there was disparity in assessment. Hence, the learned II Joint Civil Judge had fixed the rateable value with regard to the Respondent's premises at Rs.1454/-, and the learned Additional District & Sessions Judge has concurred with the reasonings of the learned Civil Judge. I do not find any perversity or illegality in the reasonings given by both the Courts below. There is no error apparent on the face of the record and there is jurisdictional error. Rule therefore stands discharged.

11. Mr.Dalvi, the learned Counsel for the Petitioner Corporation fairly states that if any excess tax is deducted by the Petitioner Corporation, the same will be either refunded or adjusted towards the future tax liability of the Respondent.

(DR.S.RADHAKRISHNAN, J.)